

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

November 6, 2008 Session

IN THE MATTER OF MALAINA H.

Appeal from the Juvenile Court for Union County
No. J-4528 Darryl W. Edmondson, Judge

No. E2008-00910-COA-R3-PT - FILED DECEMBER 16, 2008

The Juvenile Court terminated the parental rights of Rhonda H. (“Mother”) to her daughter, Malaina H. (“the Child”). The Juvenile Court found that the Department of Children’s Services (“DCS”) had proven by clear and convincing evidence that grounds existed to terminate Mother’s parental rights on the grounds of abandonment, failure to substantially comply with the statement of responsibilities in Mother’s permanency plan, and persistence of conditions making it unsafe to return the Child to Mother’s care. The Juvenile Court also found clear and convincing evidence that terminating Mother’s parental rights was in the Child’s best interest. Mother appeals claiming, among other things, that DCS failed to prove clearly and convincingly that grounds existed to terminate her parental rights. Mother also challenges the Juvenile Court’s finding that DCS had proven clearly and convincingly that termination of her parental rights was in the Child’s best interest. We vacate the portion of the Juvenile Court’s judgment finding and holding that grounds had been proven based on persistence of conditions. The judgment of the Juvenile Court is affirmed as modified.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile
Court Modified and Affirmed as Modified; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Thomas J. Tabor, Jr., Tazewell, Tennessee, for the Appellant, Rhonda H.

Robert E. Cooper, Jr., Attorney General and Reporter, and Douglas Earl Dimond, Senior Counsel, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children’s Services.

OPINION

Background

In June of 2007, DCS filed a petition to terminate Mother's parental rights to the Child. The Child has been in foster care since her birth in January 2004. As grounds for terminating Mother's parental rights, DCS alleged that: (1) pursuant to Tenn. Code Ann. § 36-1-113(g)(1), Mother had abandoned the Child by willfully failing to visit the Child in the four months immediately preceding the filing of the petition; (2) pursuant to Tenn. Code Ann. § 36-1-113(g)(1), Mother had abandoned the Child by willfully failing to pay child support during the four months immediately preceding the filing of the petition; (3) pursuant to Tenn. Code Ann. § 36-1-113(g)(2), Mother failed to substantially comply with the statement of responsibilities contained in her permanency plan; and (4) pursuant to Tenn. Code Ann. § 36-1-113(g)(3), the conditions which led to the Child's removal still persisted and other conditions existed which would subject the child to further abuse or neglect if returned to Mother's care. Finally, DCS alleged that it was in the Child's best interest to terminate Mother's parental rights.

The trial was on November 9, 2007. The first witness was Renee Presley ("Presley"), a Case Manager employed by DCS who has worked on Mother's case for three years. According to Presley, Mother's last visit with the Child was on November 2, 2007, and that visit lasted one hour and forty minutes. Mother's most recent visit prior to that was February 13, 2007. In between those two visits, Presley made thirty attempts to set up visitation with Mother, either through phone calls, mailing notifications, or going directly to Mother's house. Presley testified that she went to Mother's house five times. On April 3, 2007, Mother was at home and Presley administered a drug test, which Mother passed. On May 3, 2007, Mother was home again. Presley administered a drug test, and Mother tested positive for marijuana and "Benzo's." Presley described several times in March and April 2007 when visitation was scheduled, and Mother failed to show either for the pre-visitation drug screen or the actual visitation. Presley added that often times, her calls to Mother were not returned.

Presley met with Mother on June 22, 2007, to discuss with Mother the requirements of a new permanency plan. On that day, Mother tested positive for marijuana. Mother also tested positive for marijuana on October 4, 2007. Presley testified that Mother failed to show up for a total of eleven scheduled drug screens. Mother told Presley that the reason she failed to show for at least two of the drug screens was because she knew she would test positive.

On October 23, 2007, Mother requested a visit with the Child. This was Mother's first request for a visit since June 2007. A visitation was scheduled for November 2, and Mother was informed that she would have to pass a drug screen on November 1. Mother passed the drug screen and the scheduled visitation took place. At the visit, the Child called Mother by her first name, and referred to her foster mother as "Mommy."

Presley testified that between March and November 2007, Mother called her a total of three times, and on each of those occasions, Mother was returning Presley's phone call. Mother requested a total of five visits between February 2007 and the trial on November 9, 2007. One of those visits was cancelled because Mother did not show up for a drug screen. Three of the visits were cancelled because Mother's drug screen was positive.

Mother was fifteen years old when the Child was born, and Mother herself was in foster care at that time. When the Child was born, Mother voluntarily submitted the Child to DCS custody, and she and the Child were placed with the same foster parents until Mother turned 18 in September 2006. According to Presley, when a foster child turns 18, there are "post-custody" services that can be made available to the foster child. These services are available so long as the foster child works part-time and attends school of some sort, whether it is college or beauty school, etc. The foster child also is permitted to stay in foster care if the foster parents agree. Mother's foster mother agreed that she could remain in her home. Mother, nevertheless, moved out fifteen days after turning 18. The Child remained with the foster mother.

Presley testified that Mother initially enrolled in college at Pellissippi State Technical Community College. Mother's tuition was paid by the State. Mother dropped out because she did not feel college was right for her. Presley stated that the State then assisted Mother to enroll in CNA classes. Mother completed this training, which took four to six weeks, and began working at a nursing home in Tazewell. Mother worked at the nursing home for one month before she voluntarily quit her employment at that facility. Approximately three months later, Mother began working at another nursing home. Presley added that this employment lasted for two months before Mother stopped showing up for work and was terminated. Approximately three months later, Mother started working at a restaurant, and this job lasted less than one month. After Mother completed the initial CNA training, Presley encouraged Mother to enroll in further educational classes so she could continue to receive post-custody assistance. Mother declined. Presley testified that even though Mother was employed, albeit sporadically, she has paid no child support since she turned 18.

Mother's permanency plan required her not to associate with men who have arrest warrants out or who are out on bond. On one occasion, Presley made a surprise visit and found Mother with a man who had a warrant out for his arrest. This person later was arrested in Mother's presence.

Presley emphasized at trial that she explained to Mother the consequences of not paying child support and not visiting the Child. According to Presley:

We have a form for the criteria and procedures for termination of parental rights . . . which was presented to [Mother] at each permanency plan and it was read through when she signed in agreement and in it it states about token visitation during four months, failure to pay child support, failure to comply with the permanency plan.

Once Mother became an adult, a new permanency plan was developed and that plan was revised over time. As to this plan's requirements and Mother's lack of compliance therewith, Presley testified as follows:

Q. What were [Mother's] requirements under this plan?

A. Legal transportation, to have a license, insurance, reliable transportation, and that could be if she had a car [or] if she had someone that could state to the court she could transport her anywhere she and [the Child] needed to go who had all those things. Maintain legal employment for three months, safe stable housing, interact with her child . . .

Q. Was there something in the plan about random drug screens or drug tests?

A. Yes, to have random drug screens that would have a clean outcome.

Q. Is there something in here about associating with certain types of people?

A. Yes. . . . That she would not associate with persons who were out on bond or had warrants for their arrest. . . .

Q. Why do you contend that she failed to substantially comply with the permanency plan?

A. [Mother] has admitted that Danny Munsey was living in her home, she later stated to me he was one of the reasons she chose to leave the foster home so that she could be with him. Danny Munsey was found under her bed in a foster home prior to her turning 18, he was found in her home on April 3rd and then another boyfriend, Dixon Crowder, [Mother] also admitted to me he had a warrant for his arrest because he violated his probation and that's [why] he was arrested and in the jail. . . . She has not maintained a job longer than two months. . . .

Q. Did you ever have any instances in which she told you she was working some place and then you found out that she wasn't?

A. Yes. . . . That occurred when I got the case when she worked at Fazoli's off of Broadway. I went to see her at work and the manager told me she had quit three weeks ago.

Q. And when was the second time that happened? . . .

A. On October 4th of this year . . . [I asked for] her record of employment because she stated she had a job but I didn't know where it was. She had brought a note to the office on October 11th stating she worked from July 18th to September 20th. When I called to confirm with the manager they said no she had worked from July 18th to August 10th.

Presley acknowledged that Mother did complete parenting classes and have an alcohol and drug assessment, both of which were required by her plan. According to Presley, Mother's current boyfriend is Dixon Crowder who, according to Mother, has been charged with drug offenses and reckless endangerment in the past. Presley added that Crowder was arrested in September 2007 for a probation violation.

On cross-examination, Presley acknowledged that DCS required Mother to go through its office for visitation. The reason for this was:

[T]hat was ordered [by] the court . . . due to the foster parents receiving threatening phone calls stating that someone was going to come and kidnap [the Child], that it was [Mother's] baby, and threatening to harm the foster parents.

Presley testified that Mother received a drug and alcohol assessment through the Florence Crittenton Agency when she was in state custody. Thereafter:

We asked [Mother] to do drug treatment through it's called Crittenton Substance Abuse Services, . . . it's a service that could be provided because [Mother] was still placed with Florence Crittenton agency and that would have incorporated alcohol and drug education treatment and parenting which would take care of two requirements on the permanency plan and she refused to do it. . . .

Q. Why didn't the State . . . demand rehab?

A. We can't demand rehab. . . .

Presley stated that the Child is in a very good foster home and the Child is doing quite well. When asked what she thought was in the Child's best interest, Presley stated:

I believe that she is very connected to the home she is in, that is the home that she knows, it's been her home for half her life and she really does not know [Mother] anymore. So I think it's in her best interest to stay where she is at and be raised in that environment.

Mother also testified at trial. Mother acknowledged that she previously admitted to smoking marijuana in August of 2007, and that is why she did not submit to a drug screen at that time. Mother also admitted having a positive drug screen on October 4, 2007. Mother admitted to voluntarily placing the Child in DCS custody. Mother claimed that she left the foster home because the foster mother's boyfriend (now husband) would yell at her. Mother admitted that over the past two years she has not maintained stable employment. Mother left her job at Ridgeview Terrace Nursing Home only a couple of months after her employment began. She did not stay any longer at her next nursing home job, which ended because Mother simply quit going to work. Mother's next job was at a restaurant, and that job lasted two months. By the date of trial in November 2007, Mother had not been employed since September 20, 2007. Mother currently lives in a trailer that her mother once rented. Mother receives government assistance with the rent.

Mother admitted associating with Danny Munsey and that he was "staying with [her] some" in May 2007. Mother admitting to lying to Presley about this situation, and Mother knew she was not supposed to be associating with Munsey, much less living with him. Mother acknowledged that both Presley and the Juvenile Court Judge had told her not to associate with Munsey.

Mother does not remember calling Presley in August 2007. She further did not recall how many times, if at all, that she tried to contact Presley in June 2007. However, Mother did testify that she tried to call Presley twice in July 2007. Mother acknowledged that she did not have a phone for three or four months in 2007. Mother claimed the reason she did not visit with the Child between February and November of 2007 was because she did not have reliable transportation and because she had a drug problem. Mother acknowledged that it was only a ten minute drive from her trailer to the DCS office.

After Mother turned 18, she never was advised to seek the advice of an attorney and she never had an attorney until one was appointed to represent her in this case once the petition to terminate her parental rights was filed. Mother admitted that "some of the time" the reason she did not take drug tests was because she would have tested positive. Mother admitted she had a drug problem, but denied that DCS sought assistance for her to enter a drug rehabilitation program. Mother testified that she believes she can quit drugs altogether. When asked if she complied with her permanency plan, Mother stated she "could have done better." Mother stated that the reason she did not comply with the drug treatment plan she was in previously was because she was "not willing to drive to west Knoxville everyday."

The foster mother also testified at the trial. The foster mother testified that she would try to adopt the Child if the Child is placed for adoption. According to the foster mother, the Child calls her "Mom" and refers to the foster mother's husband as "Dad."

Following the trial, the Juvenile Court entered an order terminating Mother's parental rights. That order provides as follows, with any emphasis being in the original:

That the Tennessee Department of Children's Services has made reasonable efforts to assist this parent in reunification with her child; specifically, the department did the following:

- a. paid tuition for Community College for [Mother];
- b. paid tuition for CNA course and assisted [Mother] in obtaining employment;
- c. paid some utilities and rent through a third party provider;
- d. mother was herself a foster child and would have been allowed to remain in the Foster Care home with post-custody services but the mother voluntarily left upon turning eighteen (18) years of age; and
- e. while in foster care herself, the mother had received counseling through a third party provider which also assisted with parenting;
- f. while in foster care herself, the mother had also received daily Alcohol and Drug treatment therapy.

That [Mother] has abandoned this child in that [Mother] has willfully failed to visit or to engage in more than token visitation for four (4) consecutive months immediately preceding the filing of this petition; the [Mother] visited her child on February 13, 2007 and not again until November 2, 2007, however, the petition was filed on June 1, 2007; **the requirements of Tenn. Code Ann. § 36-1-102(1)(A)(i), and Tenn. Code Ann. § 36-1-113(g)(1) have been met;** and

That the child was removed by order of this Court for a period of six (6) months; the conditions which led to her removal still persist; other conditions persist which in all probability would cause the child to be subjected to further abuse and neglect and which, therefore, prevent the child's return to the care of [Mother]; there is little likelihood that these conditions will be remedied at an early date so that this Child can be returned to [Mother] in the near future; the continuation of the legal parent and child relationship greatly

diminishes the child's chances of early integration into a stable and permanent home; [Mother] has not been able to maintain employment; she has consistently failed drug screens; and she has continued to associate with men for whom a warrant has been issued or are out on bond; **the requirements of Tenn. Code Ann. § 36-1-113(g)(3) have been met;** and

That [Mother] has failed to comply in a substantial manner with those reasonable responsibilities set out in the foster care plans related to remedying the conditions which necessitate foster care placement; she has not consistently had drug screens; she has not had stable employment; and she has continued to associate with men who have criminal histories; **the requirements of Tenn. Code Ann. § 36-1-113(g)(2) have been met;** and

That awarding legal and physical custody of the child to [Mother] would pose a risk of substantial harm to the physical or psychological welfare of the child ... and

That it is in the best interest of [the Child] and the public that all of [Mother's] parental rights to this child be terminated With respect to the best interests, this Honorable Court finds that:

- a. [Mother] has not made changes in her conduct or circumstances that would make it safe for the child to go home;
- b. [Mother] has not made lasting changes in her lifestyle or conduct after reasonable efforts by the state to help, so that lasting change does not appear possible;
- c. [Mother] has not maintained regular visitation;
- d. Changing caregivers at this stage of the child's life would have a detrimental effect on her;
- e. It is in the child's best interests for termination to be granted, because [Mother] has not paid child support regularly;
- f. [Mother] had shown little interest in the welfare of the child; and

- g. the child has established a strong bond with her foster parents who wish to adopt her....

Mother appeals from the final judgment terminating her parental rights. Mother raises five issues which we quote from her brief:

1. Whether the Trial Court [erred] in not providing effective assistance of counsel for [Mother] during the underlying juvenile proceedings of this case as prescribed by Tennessee Supreme Court Rule 13, Tennessee Code Annotated Section 37-1-126, and Article I, Section 8 of the Tennessee Constitution?
2. Whether [Mother] was denied her rights under law when no adjudicatory hearing was conducted by the Trial Court to determine whether or not by clear and convincing evidence her child was dependent and neglected?
3. Whether the Trial Court [erred] by finding clear and convincing evidence that the Department of Children's Services exercised reasonable efforts for reunification of [Mother] with her child, whereas [Mother] did not receive necessary services from the Department to assist her in overcoming her problems with drug addiction?
4. [Mother] would argue that [the] record would show that there is no "clear and convincing evidence" to support the Trial Court's order for termination of parental rights based upon the State's statutory grounds alleging abandonment, substantial non-compliance, and persistent conditions.
5. Whether or not the Trial Court made the required "clear and convincing evidence" finding through specific findings of fact as required by T.C.A. Section 36-1-113(i) that it was in the best interest of the child for [Mother's] parental rights to be terminated?

Discussion

Our Supreme Court recently reiterated the standard of review for cases involving termination of parental rights. According to the Supreme Court:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence

is otherwise.” Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

Although not stated exactly as such, Mother's first issue is her claim that she should have been appointed counsel before the filing of the petition to terminate her parental rights. Mother argues she was entitled to have an attorney appointed to represent her from September 6, 2006, until June 6, 2007, when the Juvenile Court appointed her counsel after the filing of the termination petition on June 1, 2007. Mother essentially claims that if she had been appointed counsel sooner, specifically for the period of September 6, 2006, to June 1, 2007, she would have listened to her attorney and began doing what was required of her in the permanency plan before it was too late. Mother cites this Court to no authority which supports her claim that she was entitled to appointed counsel during this approximately nine month period immediately before the petition to terminate her parental rights was filed. If Mother's argument was correct, then literally every parent who has temporarily lost custody of their child to DCS would be entitled to an attorney from the outset, regardless of whether a petition to terminate parental rights ever was filed. This is not the law. Accordingly, we reject Mother's first issue.

Mother's second issue is her claim that she did not have an attorney present on her behalf when the Child initially was declared dependent and neglected and her rights, therefore, were, violated. The record is unclear as to who was present at the hearing where the Child was declared dependent and neglected. The order states that witnesses testified at the hearing and reports and affidavits were received. The order does not detail the attorneys that were present and who they represented. For present purposes only, we will assume that Mother was not represented by counsel at that hearing.

This Court has held that any due process violation of this nature that may occur during a dependency and neglect proceeding is effectively cured by the procedural protections required at the termination proceeding. *See In re S.Y.*, 121 S.W.3d 358, 366 (Tenn. Ct. App. 2003) (“[W]e hold that any violation of appellant's due process rights, and any violation of the Tennessee Rules of Juvenile Procedure that may have occurred at the dependent and neglect proceeding, was fully remedied by the procedural protections provided Young at the termination hearing.”). Because Mother was provided counsel once the petition to terminate was filed, any

claimed deficiency at the dependency and neglect proceeding, assuming for present purposes only that there was one, was effectively cured.¹

Mother's third issue is her claim that DCS failed to prove, clearly and convincingly, that grounds existed to terminate her parental rights. As to the grounds for termination that are at issue on appeal, Mother's parental rights were terminated pursuant to Tenn. Code Ann. § 36-1-113(g)(1) - (2) (2005). These statutory provisions are as follows:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

In addition to the foregoing, Tenn. Code Ann. §§ 36-1-102(1)(A)(i), (C) & (E) (2005) provide the following pertinent definitions:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case,

¹ Termination of parental rights based on "persistent conditions" as set forth in Tenn. Code Ann. § 36-1-113(g)(3) (2005) requires, among other things, that the child be removed from the home by court order for at least six months. On appeal, DCS has abandoned Tenn. Code Ann. § 36-1-113(g)(3) as a basis for termination of Mother's parental rights. Therefore, any negative impact on Mother's case from the dependency and neglect order no longer exists. Because DCS has abandoned Tenn. Code Ann. § 36-1-113(g)(3) as a ground for terminating Mother's parental rights, we modify the Juvenile Court's judgment to the extent the Juvenile Court found grounds had been proven pursuant to § 36-1-113(g)(3).

constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

* * *

(E) For purposes of this subdivision (1), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation[.]

The evidence in this case clearly establishes the fact that during the four month period immediately preceding the filing of the petition to terminate Mother’s parental rights, and for many months thereafter, Mother visited the Child only once. This is so despite the fact that Presley made numerous attempts to contact Mother to try to get her to visit the Child. Mother admitted in her direct examination that one of the reasons she did not visit the Child during the relevant time frame and thereafter was because she had a drug problem. The facts further establish that had Mother been able to pass several of the drug tests, she would have had additional visitation made available to her during the relevant time frame. In addition, the facts fully support a conclusion that DCS made reasonable efforts to assist Mother with her drug problem. Drug and alcohol rehabilitation was made available to Mother at no cost to her, but Mother refused, at least in part, because she did not want to drive to west Knoxville everyday. In light of the foregoing, we conclude that: (1) DCS made reasonable efforts to assist Mother with her drug problem; and (2) Mother willfully failed to visit the Child when she chose to use illegal drugs over visiting with her Child.

The next issue is whether there was clear and convincing evidence that Mother failed to substantially comply with the statement of responsibilities contained in her permanency plan, as set forth in Tenn. Code Ann. § 36-1-113(g)(2). Among other things, Mother’s permanency plan required her to stay drug-free, quit associating with people who were on bond or had warrants out for their arrest, maintain stable employment, maintain stable housing, and have reliable transportation. While Mother did complete a parenting class and A&D assessment, she did not complete any of the other significant requirements contained in her plan. Mother did not have stable employment at the time the petition was filed and still did not have reliable employment at the time of trial. In fact, she was unemployed at the time of trial. There was no proof that Mother maintained stable housing. Mother was unable to stay drug-free and failed numerous drug tests. Mother continued to associate with people who had warrants out for their arrest or who were out of jail on bond. Quite simply, Mother is not able to care for the Child, and she has not demonstrated that she has even been remotely able to care for this Child once she turned 18. We affirm the Juvenile Court’s judgment that the proof establishes clearly and convincingly that Mother failed to substantially comply with the statement of responsibilities contained in her permanency plan.

The final issue is whether the Juvenile Court erred when it concluded that DCS had proven, clearly and convincingly, that it was in the Child’s best interest for Mother’s parental rights

to be terminated. The relevant statutory provision is T.C.A. § 36-1-113(i) (2005 & Supp. 2008), which provides as follows:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

T.C.A. § 36-1-113(i). When considering a child's best interest, the court must take the child's perspective, rather than the parent's. *See White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004).

The record shows that the Juvenile Court considered all of the applicable factors. Contrary to Mother's allegation, the judgment of the Juvenile Court is sufficiently detailed and meets the statutory requirements. In reviewing the applicable factors pertaining to the Child's best interest, the Juvenile Court found that Mother had not made changes in her life that would make it safe for the Child to be returned to her care. Mother failed to make these necessary changes despite reasonable efforts made on her behalf by DCS. Mother failed to visit the Child, and it would be detrimental to the Child to change caregivers at this point in time. Finally, the Juvenile Court found that Mother showed little interest in the Child. This conclusion is apparent given Mother's consistent choice of marijuana over the Child. The facts certainly do not preponderate against the Juvenile Court's findings. We conclude that the Juvenile Court properly considered the relevant factors and that its judgment is sufficiently detailed. We further conclude that there was sufficient evidence presented at trial for the Juvenile Court to find that DCS had established, clearly and convincingly, that termination of Mother's parental rights was in the Child's best interest.

Conclusion

The portion of the Juvenile Court's judgment terminating Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3) is vacated. The judgment of the Juvenile Court is affirmed as modified. This case is remanded to the Juvenile Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Rhonda H., and her surety, if any, for which execution may issue, if necessary.

D. MICHAEL SWINEY, JUDGE